

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AL-HARETH AL-BUSTANI,

Plaintiff,

v.

SEAN B ALGER, et al.,

Defendants.

CASE NO. C22-5238JLR

ORDER

I. INTRODUCTION

Before the court is *pro se* Defendant Sloan Bella's second motion to dismiss Plaintiff Al-Hareth Al-Bustani's claims against her. (Mot. (Dkt. # 45).¹) Mr. Al-Bustani

¹Ms. Bella filed her reply on October 31, 2022, 10 days after the noting date for her motion. (*See* Reply (Dkt. # 55) at 1); *see also* Local Rules W.D. Wash. LCR 7(d)(3) (providing that "any reply papers shall be filed and served no later than the noting date"). Ms. Bella did not file a motion for relief from the deadline. (*See* Dkt.) Because the noting date is the deadline by "which all briefing is complete and the matter is ready for the court's consideration," Local Rules W.D. Wash. LCR 7(b)(1), the court will not consider Ms. Bella's late reply. The court reminds Ms. Bella that although she proceeds *pro se*, the Local Rules are not optional and she must comply with them.

opposes the motion. (Resp. (Dkt. # 52).) The court has reviewed the parties' submissions, the balance of the record, and applicable law. Being fully advised,² the court GRANTS Ms. Bella's motion.

II. BACKGROUND

Mr. Al-Bustani's claims against Ms. Bella arise out of the allegedly "false and speculative statements" she and other Defendants made in the wake of the death by suicide of Mr. Al-Bustani's wife, Tracy Twyman.³ (Am. Compl. (Dkt. # 44) ¶ 35.) Ms. Twyman was "an accomplished researcher, author and media personality in the genre of the occult." (*Id.* ¶ 24.) News of Ms. Twyman's death by suicide was met with speculation that she had instead been murdered. (*Id.* ¶¶ 28, 34.) Ms. Bella, who works as a psychic, appeared as a guest on an episode of Defendant Clyde Lewis's radio show, "Ground Zero" (the "Ground Zero Show"), to discuss the circumstances surrounding Ms. Twyman's death. (*Id.* ¶¶ 34-36.) In the episode of the Ground Zero Show, Ms. Bella "reported on her alleged psychic experience communicating with Ms. Twyman," in which Ms. Twyman purportedly told Ms. Bella:

that "it was not a suicide . . . she was actually tricked," 2) that it was a "kidnapping" involving "muscle relaxant", 3) that "there's no way that they actually think she killed herself the way that they found her because she couldn't have done that herself", 4) that "this was somebody that she knew", 5) that someone was "posing as a husband and wife", 6) that there was "one

² Neither party requests oral argument (*see* Mot. at 1; Resp. at 1) and the court does not find oral argument necessary to dispose of this motion, *see* Local Rules W.D. Washington LCR 7(b)(4).

³ The court described much of the factual background in its August 9, 2022 order granting in part and denying in part Ms. Bella's first motion for expedited relief and to dismiss Mr. Al-Bustani's claims against her. (*See* 8/9/22 Order (Dkt. # 35) at 2-4.) Accordingly, the court describes here only those facts relevant to the instant motion.

1 name” communicated to [Ms.] Bella and 7) that “this is a betrayal on a total
2 level.”

3 (*Id.* ¶ 36.) Mr. Al-Bustani alleges, in relevant part, that these comments and statements
4 by other Defendants on the Ground Zero Show were “false and defamatory” and
5 unleashed rampant speculation on the Internet about the circumstances surrounding Ms.
6 Twyman’s death. (*See id.* ¶¶ 40-41, 49.)

7 On the basis of these allegations, Mr. Al-Bustani filed a complaint in April 2022,
8 raising claims against Ms. Bella for invasion of privacy by false light, intentional and
9 negligent infliction of emotional distress, and violation of the Washington Personality
10 Rights Act (“WPRA”). (*See id.* ¶¶ 74-98.) In response, Ms. Bella sent a one-page letter,
11 which the court construed as a motion to dismiss all of Mr. Al-Bustani’s claims against
12 her. (*See* 1st MTD (Dkt. # 12); *see also* 8/9/22 Order at 4.) The court denied Ms. Bella’s
13 motion with respect to Mr. Al-Bustani’s claims for invasion of privacy and both
14 intentional and negligent infliction of emotional distress. (*See* 8/9/22 Order at 17-18.)
15 The court granted Ms. Bella’s motion with respect to Mr. Al-Bustani’s WPRA claim
16 without prejudice and with leave to amend his complaint to cure the deficiencies
17 identified in the order. (*Id.* at 18.)⁴ Mr. Al-Bustani timely filed an amended complaint.
18 (*See* Am. Compl.)
19
20

21 ⁴ Mr. Al-Bustani originally also included a claim for direct copyright infringement
22 against Ms. Bella. (*See* Compl. ¶¶ 51-60.) However, in his amended complaint, Mr. Al-Bustani
abandons his claim against Ms. Bella for direct copyright infringement. (*See* Am. Compl.
¶¶ 56-65; Resp. at 2.)

940, 946 (9th Cir. 2005), the court need not accept as true legal conclusions or “formulaic recitation[s] of the legal elements of a cause of action,” *Chavez v. United States*, 683 F.3d 1102, 1008 (9th Cir. 2012). Because Ms. Bella proceeds *pro se*, the court must construe her pleadings liberally. See *McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992).

B. The Washington Personality Rights Act

The WPRA establishes that “[e]very individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness,” which is “freely transferable, assignable, and licensable,” and survives “the death of the individual or personality.” RCW 63.60.010. An infringement under the WPRA occurs when:

[a]ny person . . . uses or authorizes the use of a living or deceased individual’s or personality’s name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund-raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or oral, express or implied consent of the owner of the right.

RCW 63.60.050. Conduct can infringe the WPRA regardless of “whether the use or activity is for profit or not for profit.” *Id.* However, the WPRA exempts the unauthorized use of a name “in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody.” RCW 63.60.070(1). The statute also exempts unauthorized use of a name during a radio program “when the use does not inaccurately claim or state an endorsement by the individual or personality.” RCW 63.60.070(2)(b).

On August 9, 2022, the court dismissed Mr. Al-Bustani’s WPRA claim against Ms. Bella without prejudice, finding the following faults with Mr. Al-Bustani’s

1 complaint: (1) Mr. Al-Bustani failed to allege that Ms. Bella appeared on the program
 2 for purposes of advertising her services as a psychic; (2) Mr. Al-Bustani acknowledged
 3 that Ms. Twyman’s death was a “matter of some cultural and public interest”; and (3) Mr.
 4 Al-Bustani failed to allege that Ms. Bella inaccurately claimed an endorsement from Ms.
 5 Twyman in her appearance on the Ground Zero Show. (*See* 8/09/22 Order at 10-11.)
 6 Mr. Al-Bustani added the following factual allegations about Ms. Bella’s appearance on
 7 the Ground Zero Show in his Amended Complaint to cure the deficiencies:

8 Upon information and belief, the Ground Zero [S]how parties made these
 9 statements in order to inaccurately claim an endorsement by Ms. Twyman or
 10 her estate. In other words, by freely speculating about the death of Ms.
 11 Twyman, the Ground Zero [S]how parties falsely claimed an endorsement
 12 by Ms. Twyman or her estate (i.e., Mr. Al-Bustani) in order to promote each
 13 of their respective businesses and further increase their audience, followers
 and clientele. As [Defendant Clyde] Lewis knew from speaking with Mr.
 Al-Bustani shortly after his wife’s death, the matter discussed on the show
 was a matter of private interest (something Al-Bustani had asked Lewis not
 to discuss) and does not constitute comment on a matter of public
 interest

14 (Am. Compl. ¶ 37; *see also* Resp. at 6 (repeating these allegations).)

15 Ms. Bella again urges the court to dismiss Mr. Al-Bustani’s WPRA claim against
 16 her because Ms. Twyman was a public figure, and her death was a matter of public
 17 concern. (*See* Mot. at 1-2.) As the court has already recognized, Mr. Al-Bustani, too,
 18 alleges that Ms. Twyman’s death was the matter of some cultural and public interest—at
 19 least among those interested in the occult and familiar with Ms. Twyman’s work—and
 20 that Ms. Bella appeared on the Ground Zero Show to comment on that topic. (*See* Am.
 21 Compl. ¶¶ 24-25 (describing Ms. Twyman as “an accomplished researcher, author and
 22 media personality,” and noting that she “made a name for herself” before publishing her

1 own books and detailing her media appearances, including in multiple National
2 Geographic documentaries); *see also* 8/9/22 Order at 11.) Mr. Al-Bustani’s conclusory
3 statement that Ms. Twyman’s death “was a matter of private interest” merely because Mr.
4 Al-Bustani had asked Mr. Lewis not to discuss it does not undermine his other
5 acknowledgements that Ms. Twyman was a public figure and that her death is a matter of
6 public concern. (*See* Am. Compl. ¶ 37.) In his response to Ms. Bella’s motion, Mr.
7 Al-Bustani repeats his assertion that her death was a private matter but fails to identify
8 any legal authority for the position that a party may unilaterally designate a topic as a
9 “matter of private interest” and thereby evade the public interest exemption to the
10 WPRA. (*See* Resp. at 6.) After conducting its own research, the court is unable to
11 identify any such authority, either. Accordingly, the court again concludes that Ms.
12 Bella’s comments on the Ground Zero Show are exempt from liability under the WPRA
13 as comments on a matter of public concern. *See* RCW 63.60.070(1).

14 Even if Ms. Twyman’s death were not a matter of public concern, Mr.
15 Al-Bustani’s WPRA claim against Ms. Bella would still fail because he does not
16 plausibly allege that Ms. Bella inaccurately claimed an endorsement by Ms. Twyman or
17 her estate. *See* RCW 63.60.070(2)(b). Mr. Al-Bustani amended his complaint to assert
18 that “the Ground Zero [S]how parties made these statements in order to inaccurately
19 claim an endorsement by Ms. Twyman or her estate,” and that “by freely speculating
20 about the death of Ms. Twyman, the Ground Zero [S]how parties falsely claimed an
21 endorsement by Ms. Twyman or her estate.” (Am. Compl. ¶ 37.) These statements
22 merely assert a legal conclusion without factual support. Therefore, the court need not

1 accept these statements as true in evaluating Ms. Bella's motion to dismiss. *See Chavez*,
 2 683 F.3d at 1008 (holding that the court need not accept legal conclusions or formulaic
 3 recitations of the elements of a legal claim as true). Mr. Al-Bustani does not identify any
 4 facts that would allow the court to reasonably infer that Ms. Bella is liable under the
 5 WPRA, *see Iqbal*, 556 U.S. at 678, or point to any legal authority that a party claims an
 6 endorsement by a person by "freely speculating" about that person (*see Resp.*).
 7 Accordingly, Mr. Al-Bustani's WPRA claim against Ms. Bella also fails because Mr.
 8 Al-Bustani does not plausibly allege that Ms. Bella inaccurately claimed an endorsement
 9 by Ms. Twyman or her estate. Therefore, the court DISMISSES Mr. Al-Bustani's
 10 WPRA claim against Ms. Bella.

11 **C. Leave to Amend**

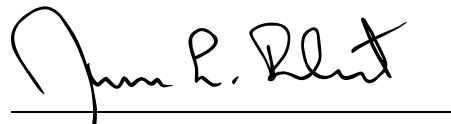
12 A district court should generally grant leave to amend, "unless it determines that
 13 the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*,
 14 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting *Doe v. U.S.*, 58 F.3d 494, 497 (9th Cir.
 15 1995)). The court has especially broad discretion to grant or deny leave to amend where
 16 the plaintiff has already filed an amended complaint. *Sisseton-Wahpeton Sioux Tribe v.*
 17 *United States*, 90 F.3d 351, 355 (9th Cir. 1996). Here, Mr. Al-Bustani already had an
 18 opportunity to cure the deficiencies in his WPRA claim (*see* 8/9/22 Order at 11-12), but
 19 still fails to state a plausible claim for relief in his amended complaint or identify any new
 20 facts or legal theories that he could not have incorporated into prior iterations of his
 21 complaint (*see Resp.* (repeating, word for word, the allegations in his Amended
 22 Complaint)). *See, e.g., Turner v. Cnty. of Los Angeles*, 18 F. App'x 592, 597 (9th Cir.

2001) (concluding that the court did not abuse its discretion in dismissing the second amended complaint with prejudice and without leave to amend where the court had already allowed the plaintiff to amend the complaint with instructions on how to cure the complaint's deficiencies); *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1052 (9th Cir. 2008) ("Appellants fail to state what additional facts they would plead if given leave to amend Accordingly, amendment would be futile."). Therefore, the court concludes that further amendment to Mr. Al-Bustani's WPRA claim against Ms. Bella would be futile. The court DISMISSES this claim with prejudice and without leave to amend.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS Ms. Bella's motion to dismiss (Dkt. # 45) Mr. Al-Bustani's WPRA claim against her with prejudice and without leave to amend. The court DENIES the motion with respect to Mr. Al-Bustani's remaining claims against Ms. Bella for invasion of privacy, negligent infliction of emotional distress, and intentional infliction of emotional distress. .

Dated this 21st day of November, 2022.


JAMES L. ROBART
United States District Judge